

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**XAC, LLC, formerly known as Amici LLC,
and XEROX CORPORATION,**

Plaintiffs,

v.

JOHN A. DEEP,

Defendant.

**1:07-CV-135
(FJS/RFT)
(Lead Case)**

JOHN A. DEEP,

Plaintiff,

v.

**XAC, LLC, formerly known as Amici LLC,
XEROX CORPORATION, and iDEAL
APPLICATIONS, LLC,**

Defendants.

**1:07-CV-496
(FJS/RFT)
(Member Case)**

APPEARANCES

OF COUNSEL

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JOHN A. DEEP

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Defendant *pro se*

SCULLIN, Senior Judge

ORDER

Defendant filed a motion to dismiss for lack of subject matter jurisdiction in *XAC, LLC v. Deep*, 1:07-CV-135, on July 12, 2007. *See* Dkt. No. 24. On August 6, 2007, Plaintiffs moved to consolidate *XAC, LLC v. Deep*, 1:07-CV-135, with *Deep v. XAC, LLC*, 1:07-CV-496. *See* Dkt. No. 27. On September 17, 2007, Magistrate Judge Treece granted Plaintiffs' motion to consolidate, designated *XAC, LLC v. Deep*, 1:07-CV-135, as the lead case and *Deep v. XAC, LLC*, 1:07-CV-496, as the member case, and directed that all filings and court submissions would be made in the lead case. *See* Dkt. No. 40.

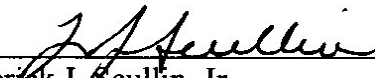
In support of his motion, Defendant argues that Plaintiffs' complaint in *XAC, LLC v. Deep*, 1:07-CV-135, fails to allege a basis for federal subject matter jurisdiction. *See* Defendant's Memorandum of Law at 1. Even a cursory review of Plaintiffs' complaint demonstrates that Defendant's assertion is without merit. Plaintiffs' complaint seeks a determination regarding the validity of a copyright and, therefore, arises under the Copyright Act, 17 U.S.C. § 1701 *et seq.* Moreover, in *Deep v. XAC, LLC*, 1:07-CV-496, which is now part of this consolidated action, the complaint involves claims of copyright infringement.

Accordingly, the Court hereby

ORDERS that Defendant's motion to dismiss for lack of subject matter jurisdiction is
DENIED.

IT IS SO ORDERED.

Dated: September 30, 2008
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge